

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

IN THE MATTER OF)

AMENDMENTS OF PARTS 32, 36, 61,)
64, AND 69 OF THE COMMISSION'S RULES)
TO ESTABLISH AND IMPLEMENT REGULATORY)
PROCEDURES FOR VIDEO DIALTONE SERVICE)

RM-8221

TO: THE COMMISSION

**REPLY COMMENTS OF COMPUSERVE INCORPORATED IN SUPPORT OF
JOINT PETITION FOR RULEMAKING**

CompuServe Incorporated ("CompuServe"), by its attorneys,
hereby submits its reply comments in support of the Joint
Petition for Rulemaking ("Joint Petition") filed by the Consumer
Federation of America and the National Cable Television
Association, Inc. (collectively "CFA/NCTA").^{1/}

I. INTRODUCTION AND BACKGROUND

The CFA/NCTA Joint Petition states that the four video
dialtone proposals submitted thus far by the Regional Bell
Operating Companies (RBOCs) (New York Telephone, Bell Atlantic,
and New Jersey Telephone) raise important questions concerning
the proper allocation of the costs attributable to video dialtone
service, questions which the FCC should resolve in the context of
a rulemaking proceeding, as opposed to individual Section 214

^{1/} Consumer Federation of America and the National Cable
Television Association, Inc. Joint Petition For Rulemaking and
Request for Establishment of a Joint Board, RM-8221, filed
April 8, 1993.

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applications.^{2/} The Joint Petition asks the FCC to amend Part 32 of its Rules to adopt video dialtone-specific cost accounting requirements.^{3/} Changes to the access charge (Part 69) and price cap (Part 61) rules also are urged as a means of minimizing the risk of cross-subsidization.^{4/} The Joint Petition also seeks a comprehensive set of Part 64 rules to properly divide the cost allocations for video dialtone service between regulated basic and nonregulated enhanced categories.^{5/} Finally, the Petition argues that the Customer Proprietary Network Information (CPNI) rules adopted by the FCC for the enhanced services area should be revised in the video dialtone context to prevent local exchange carriers (LECs) from misusing basic telephone subscriber information.^{6/}

Initial comments were filed on May 21, 1993. Several state public service commissions support the Petition,^{7/} and NASUCA and NARUC join several cable television associations in urging

^{2/} Joint Petition at 5-10.

^{3/} Id. at 16-17.

^{4/} Id. at 17-19.

^{5/} Id. at 19-20.

^{6/} Id. at 20-22. The Joint Petition also states that a "specialized" Federal-State Joint Board is needed to recommend the appropriate cost assignment of video dialtone plant between the federal and state jurisdictions. Id. at 11-13. CompuServe does not take a position on the need for a Joint Board.

^{7/} See Comments of District of Columbia Public Service Commission; Comments of the People of the State of California and the Public Utilities Commission of the State of California; Comments of the Indiana Utility Regulatory Commission and the Michigan Public Service Commission Staff.

the FCC to adopt the changes requested by the Joint Petition.^{8/}
The RBOCs, GTE, and USTA oppose the Joint Petition.

CompuServe is one of this country's leading providers of on-line information database services to personal computer owners, furnishing services both to residential and business customers. CompuServe provides users with access to over 1,700 information, entertainment, and other interactive computer-based services. Currently, CompuServe has over 1.3 million residential, educational, non-profit, and small business subscribers to its consumer information services. In addition, over 1,800 companies of all sizes rely on CompuServe's business information services.

CompuServe supports the CFA/NCTA Joint Petition. The FCC should institute promptly a rulemaking proceeding which proposes to adopt the specific changes requested in the Joint Petition.

II. DISCUSSION

CompuServe believes that the FCC needs to confront the important cost allocation issues raised by the Joint Petition. Because these issues recur in the context of each of the four video dialtone applications which were filed after the FCC's Video Dialtone Order was issued,^{9/} CompuServe agrees with CFA and NCTA that a more comprehensive approach is needed if the

^{8/} See Comments of the National Association of State Utilities Consumer Advocates (NASUCA); Comments of the National Association of Regulatory Utilities Commissioners (NARUC).

^{9/} Telephone Company/Cable Television Cross-Ownership Rules, Second Report and Order, 7 FCC Rcd 5781 (1992) ("Video Dialtone Order").

interests of ratepayers and independent competitors are to be protected against improper cross-subsidization and other anticompetitive practices.

The FCC originally adopted a case-by-case approach to establish safeguards and cost allocation requirements for video dialtone service in the absence of any practical experience with

Rules should be revised to include cost accounting requirements which apply specifically to the provision of broadband services such as video dialtone by the LECs. This change will enable all

fewer than 20 telephone lines.^{12/} To ensure competitive equity and meet the customers' reasonable privacy expectations, the FCC should require that all providers of enhanced services, including video dialtone service, must gain the prior written consent of basic telephone customers before using their CPNI.

In their initial comments, the RBOCs, GTE, and USTA rely primarily on the argument that the Joint Petition is merely a late-filed and redundant petition for reconsideration of the original Video Dialtone Order.^{13/} This argument is incorrect because, as indicated above, the current factual situation is far different than the one faced by the FCC when it first issued the Video Dialtone Order. In fact, CFA and NCTA submitted the Joint Petition in direct response to the "new facts" presented by the RBOCs' four video dialtone applications.

The RBOCs also argue that the Joint Petition is incorrect on the substance of the issues raised.^{14/} Although CompuServe endorses most of the arguments advanced in the Joint Petition, the short answer to the RBOCs' claim is that an agency rulemaking is the proper forum to determine what specific types of safeguards and generic cost allocation rules are needed. For purposes of acting on this Joint Petition for Rulemaking, the FCC

^{12/} Computer III Remand Proceedings, Order, 6 FCC Rcd 7571, 7609 (1991).

^{13/} See, e.g., Comments of NYNEX at 6-7; Comments of BellSouth at 3-9; Comments of USTA at 2-3; Comments of GTE at 2-3.

^{14/} See, e.g., Comments of Ameritech at 6-12; Comments of Bell Atlantic at 4-10; Comments of US West at 7-14.

need not decide now which specific rules should be adopted, but only that something more than its present ad hoc approach is necessary to ensure that appropriate safeguards are in place sooner rather than later to govern the LECs' provision of broadband services such as video dialtone. The record now before the Commission provides more than sufficient support to institute such a rulemaking proceeding.

III. CONCLUSION

For the reasons discussed above, CompuServe supports the CFA/NCTA Joint Petition for Rulemaking and urges the Commission to act accordingly.

Respectfully submitted,

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